

22 January 1988

OCA88-0177

MEMORANDUM FOR: Director, Office of Security  
C/ALD/OGC  
C/ICAD/OGC

OCA FILE leg

FROM:  Legislation  
Office of Congressional Affairs

STAT

RE: Senate Committee Markup of S. 1904 - Polygraph  
Legislation

1. On Wednesday, 27 January 1988, the Senate Labor and Human Resources Committee plans to meet in committee to "markup" S.(1904) the "Employee Polygraph Protection Act."

2. We understand that the "markup" will not affect the exemptions for the government or the Agency which the bill currently contains.

3. Senator Quayle who sits on the Committee's minority, has introduced his own polygraph bill, S. 1854 (copy attached). In view of the overwhelming and bipartisan support for S. 1904 on the Committee, however, it does not seem likely that Quayle's bill will see action, at least at this stage. Please feel free to provide us your views on S. 1854, however, in the event that it becomes involved in the process at some point.

4. We will advise you of further developments.

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SUBJECT: Senate Committee Markup of S. 1904 - Polygraph Leg.

OCA/LEG/ [ ] (22 January 1987)

STAT

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STAT

S. 1854

To amend the Federal Food, Drug, and Cosmetic Act to include and regulate a polygraph as a medical device under such Act, and for other purposes.

## IN THE SENATE OF THE UNITED STATES

November 5, 1987

Mr. Quayle introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

## A BILL

To amend the Federal Food, Drug, and Cosmetic Act to include and regulate a polygraph as a medical device under such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

## SECTION 1. DEFINITION OF DEVICE.

Section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) is amended--

(1) by striking out "or" at the end of paragraph (2);

(2) by striking out "and" at the end of paragraph (3) and inserting in lieu thereof "or"; and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) solely for the purposes of section 502, used, or the results of which are used, to render a diagnostic opinion concerning the honesty or veracity of a subject, and".

## SEC. 2. MISBRANDED DEVICES.

Section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352) is amended by adding at the end thereof the following new subsection:

"(u) In the case of a device referred to in section 201(h)(4), if the device does not fully disclose to the purchaser, user, operator, and subject the limitations of the accuracy and reliability of the device under specified conditions of use."

## SEC. 3. PROHIBITED DISCRIMINATION.

Section 704 of Title VII of the Civil Rights Act (42 U.S.C. 2000e-3) is amended by adding at the end thereof the following new subsection:

"(c) It shall be an unlawful employment practice for an employer to sanction polygraph testing procedures which include questions for an employee or an applicant for employment concerning race, color, religion, sex, or national origin."

Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended by adding at the end thereof the following new subsection:

"(8) It shall be an unfair labor practice for an employer to sanction polygraph testing procedures which include questions for an employee or applicant for employment concerning membership in or opinions concerning a labor organization."